

MYERS

EXHIBIT A

James W. Andersen
Laurel Park Community, LLC, et al. v. City of Tumwater

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UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

LAUREL PARK COMMUNITY, LLC, a)
Washington limited liability)
company; TUMWATER ESTATES)
INVESTORS, a California limited)
partnership; VELKOMMEN MOBILE)
PARK, LLC, a Washington limited)
liability company; and)
MANUFACTURED HOUSING COMMUNITIES)
OF WASHINGTON, a Washington)
non-profit corporation,)
Petitioner(s),)
vs.) No. C09-5312 BHS
CITY OF TUMWATER, a municipal)
corporation,)
Defendant(s).)

DEPOSITION UPON ORAL EXAMINATION OF

JAMES W. ANDERSEN

January 29, 2010

Tumwater, Washington

Taken Before:

SUE E. GARCIA, CCR # 2781, RPR
Registered Professional Reporter
of

Capitol Pacific Reporting, Inc.
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1 A We're hoping that your ordinance goes away.

2 Q So you haven't filed any tax appeal of your current
3 assessment?

4 A No.

5 Q Do you think that operation of a mobile home park is
6 detrimental to the properties that surround your mobile
7 home park?

8 A No.]

9 Q Do you believe that maintaining or preserving
10 affordable housing is a legitimate public goal for the
11 City of Tumwater to be interested in?

12 A Yes.

13 Q And is a mobile home park like the one you operate a
14 source of affordable housing?

15 A Yes.]

16 Q Okay. And when you testified to the city council, I
17 believe you expressed some concerns about the rates
18 that you were charging your tenants. Do you recall
19 that?

20 A The rates. What rates? The rent?

21 Q The rental rates.

22 A I'm concerned with what we will be forced to charge
23 them.

24 Q Explain what --

25 Is there anything in the mobile-home-park zoning

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1 viable.

2 Q Have you done investigations as to the cost to extend
3 city sewer?

4 A Yes, I have.

5 Q Okay. What types of costs are involved in doing that?

6 A According to your guys down here in your own office
7 here, it was about -- I believe they had said three --
8 three to -- about \$300,000 for the city sewer, and
9 that's doesn't include the construction part of it.

10 Over \$100,000 just to connect up to our existing water
11 lines, and that is not running meters out to
12 individuals and does not, I don't believe, include
13 running it down the street either. And the city sewer
14 is still a ways away. It's on the corner of Littlerock
15 Road. So I have to pay an additional to bring it to
16 the park.

17 Q And if you wanted to redevelop it to some other use
18 besides the mobile home park, you would have to incur
19 all of those costs, as well, would you not?

20 A Correct, at a higher density.

21 Q Do you know when your parents purchased the mobile home
22 park? 1977 I believe is what you said.

23 A I believe I told you '75.]

24 Q '75. Do you know how much they paid?

25 A No, I don't.]

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1 estimated six to seven years ago?

2 A No, I don't.

3 Q With regard to your operation of the property, how much

4 is the space rent at Velkommen?

5 A \$350 and \$370.

6 Q And what's the difference? What's the reason for the

7 different rate?

8 A The ones for \$370 have a carport.

9 Q Is that carport provided by the park?

10 A Correct.

11 Q And does the park maintain the carports?

12 A Yes.

13 Q When was the last time you raised the rates?

14 A Well over a year ago. I think it was in '08.

15 Q How much was it prior to the last increase?

16 A \$30 cheaper.

17 Q You did not, then, raise the rates in 2009?

18 A (Shakes head.)

19 Q Why not?

20 A Wanted to keep the price down for the tenants because

21 of the environment.

22 Q The economic environment?

23 A Correct.

24 Q Okay. Have you done any analysis of the market rates

25 that are being charged by other mobile home parks in

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1 Tumwater and Thurston County?

2 A I did last year or the year before.

3 Q How does your park compare with other mobile home

4 parks?

5 A Cheaper.

6 Q Would you say that your \$350 to \$370 rates are below

7 the market average?

8 A Yes.

9 Q Do you have any rate increases planned for the future?

10 A Yes.

11 Q When are you planning on raising the rates?

12 A Maybe this summer.

13 Q And how much are you planning to raise the rates by?

14 A Probably \$15 to \$20. [redacted]

15 That's not gonna get out in the paper, is it?

16 Q No. I think we've agreed that we're not going to be

17 discussing these in public, and that would be subject

18 to the protective order, the rental-increase plans.

19 MR. OLSEN: Good.

20 THE WITNESS: That's not a firm thing. Got

21 to see what the environment looks like.

22 Q (By Mr. Myers) So it's something that you're

23 contemplating?

24 A Right.

25 Q Has Velkommen Mobile Park, LLC, earned a profit in the

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1 you recall?

2 A I don't recall. It depends on if I first saw it in the
3 paper versus if it was a notice.

4 Q Do you recall when you first found out about the
5 proposal?

6 A I believe it was in 2008.

7 Q Do you recall what month in 2008?

8 A No, I don't.

9 Q But by June 2008 you certainly knew that there was a
10 proposal --

11 A Absolutely.

12 Q -- being considered.

13 Now that the city council has adopted that
14 proposal, how has it affected your operation of the
15 mobile home park?

16 A [REDACTED] The operation hasn't -- the operating it hasn't changed
17 as far as the regular maintenance of the park. The
18 value of the park, I believe, has changed. [REDACTED]

19 Q Does the zoning constrict your ability to charge the
20 rent that you see fit?

21 A It will. [REDACTED]

22 Q How?

23 A If we're forced to keep it as a park, we'll be forced
24 to connect up to city sewer down the road and then
25 having to raise the rates to accommodate that.

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1 Q And is there anything in the ordinance that limits your
2 ability to raise the rent if you have to incur those
3 costs?

4 A There's nothing in the ordinance that doesn't say that
5 we can't raise the rent.] However, there's tenants in
6 there that can't afford to have their rates raised.
7 We've been providing low-income housing or affordable
8 housing for the City of Tumwater and Thurston County
9 for over 30 years. It's Tumwater that has taken that
10 away. It's not us.

11 Q Okay. Has this ordinance imposed any costs upon
12 Velkommen Mobile Home Park in its operations?

13 A Currently, no. In the future, absolutely.]

14 Q What are those costs that it's going to impose in the
15 future?

16 A When we have to connect up to city sewer, city water.

17 Q And that, in your estimate, is the \$300,000 for --

18 A Over \$300,000 for sewer.

19 Q -- for sewer and \$100,000 for water?

20 A Over \$100,000 for water because that was just the
21 initial trunk line into the park for one meter, one
22 supply meter that doesn't go into account connecting up
23 every single unit that's utilizing our existing trunk
24 lines in the park.

25 Q And that presumes that your existing drain fields will

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1 Q At the time the zoning ordinance was under
2 consideration, did Velkommen have any plans to convert
3 to any other use?

4 A I believe early on, when my father was around, with the
5 initial, was to be able to convert it.

6 Q So 25 years ago your father had plans to convert it?

7 A Sure. He developed two of the -- some -- two of the
8 developments right down the street from us.

9 Q Okay. Why didn't he convert this park --

10 Do you know why he didn't convert this park before
11 he died?

12 A It was -- let's see -- '77 to '84. I was pretty young.
13 All the infrastructure he had just put in that would be
14 viable.

15 Q Okay.

16 A Usually would wait about 20 years or so, 20 to 30
17 years.

18 Q Do you know whether there were any time tables or
19 written plans for when that conversion would occur?

20 A Nope.

21 Q Just something he was thinking of at some point in the
22 future?

23 A I believe so, keeping his options open, putting the
24 land in the bank.

25 Q When you first learned that this city ordinance was

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1 being considered, did you have any specific plans to
2 propose conversion of the Velkommen park?

3 A I wanted to get rid of it.

4 Q Why?

5 A Because I know what -- I know what's right down the
6 road, and I don't want to see the people's faces when
7 their rates go up or when they're forced to move out of
8 the homes because of the ordinance the city has
9 imposed.

10 Q Okay. So your plan was to sell it at -- at that point,
11 correct?

12 A We have entertained a couple offers throughout the
13 years. And in 2008 -- well, I shouldn't say
14 "entertained." We had gotten several offers prior to
15 2008. When we saw the ordinance, we decided enough's
16 enough; you know, we weren't going to hold out any
17 longer, wanted to get rid of the park --

18 Q Okay.

19 A -- 'Cause the value's just going to be shooting down.

20 Q So prior to the time the City adopted this ordinance,
21 is it fair to say you did not have plans to convert the
22 park to a different use under your ownership?

23 A I don't own it.

24 Q Or under the LLC's ownership.

25 A I believe -- I believe we have looked -- or I believe [redacted]

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1 the idea was entertained to develop it.

2 Q What does it mean that the idea was entertained? I
3 don't understand what you mean.

4 A How could you not know what it means? I mean, we
5 thought of developing. If you have a 5-acre chunk with
6 a little beat-up house, you're entertaining the idea of
7 some day maybe there would be more than just a house.

8 Q Okay. When did you entertain those ideas?

9 A I didn't entertain it. I think the family as a whole
10 entertained it.

11 Q Okay. Tell me about the decision-making structure
12 within Velkommen Mobile Park, LLC.

13 Who has the authority to make decisions within
14 that entity?

15 A I would say I've got the decision-making. I believe
16 Phyllis has the decision-making. Well, I know she's
17 got it 'cause she's the owner.

18 Q And she owns 100 percent of the shares?

19 A She owns 100 percent.

20 Q Do you discuss with her her plans for the property?

21 A Yes.

22 Q Did you ever discuss with her a plan to redevelop the
23 property under the existing ownership?

24 A I believe the family has entertained the idea of
25 developing it.

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1 Q I'm asking specifically about your conversations with
2 your mother concerning that.

3 A We have talked about selling it and whether or not
4 there would be houses being put in there or developing
5 it ourselves.

6 Q Okay. When did you discuss developing it yourself with
7 your mother?

8 A It wasn't real in-depth talk. It was just, you know,
9 just like little whims. It wasn't, "Let's go talk to []
10 an architect. Let's go do all this." It was
11 just . . .

12 Q So you never consulted with a land-use planner?

13 A No. Not -- I myself never have.

14 Q Do you know if your mother ever did?

15 A I have no idea.

16 Q As the managing agent or the managing partner of
17 Velkommen Mobile Park, LLC, would you say you're in a
18 position to know if that consultation occurred?

19 A In the last three years I've been in that position.

20 Even though I've been managing the park, I wasn't part
21 of the LLC general manager.

22 Q So you only became the general manager of the LLC about
23 three years ago?

24 A I believe it was three years ago. Could be four.

25 Q 2006?

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1 Q Okay. Did he ask you to provide additional
2 documentation as to the income that was being produced
3 by the park?

4 A I believe with Nissing he tinkered out pretty quick.
5 He just stopped calling and stuff.

6 Q Okay. Do you know why?

7 A Nope.

8 Q Page 3 is the beginning of a commercial and investment
9 real estate purchase and sale agreement, or I will call
10 it an offer to buy the park from Washington Street
11 Properties, LLC. And it's for \$1,600,000. Is that
12 right?

13 A Correct.

14 Q Okay. Was --

15 Did you accept this offer to sell the property at
16 \$1,600,000?

17 A No, we didn't.

18 Q Why not?

19 A The price was a little under. We were going to work at
20 trying to get his price up. And then, like I said, he
21 just kind of trickled out of the light there.

22 Q In his cover letter on page 1 he mentions concerns
23 about the water system.

24 A Uh-huh.

25 Q Did you discuss those concerns with Mr. Nissing?

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1 A Yes.

2 Q Tell me what your discussions were in response to these
3 concerns?

4 A Well, we don't want to do long-term water service to
5 the park. The water system is actually on a private
6 property, on Phyllis' private property, and we want to
7 keep that separated from the park. [redacted]

8 Q Is that a private water company?

9 A It is our water company.

10 Q And what --
11 Do you know what the legal entity is that --

12 A Andersen PUD.

13 Q And does Andersen PUD serve anybody other than
14 Velkommen Mobile Home Park?

15 A Yes.

16 Q Who gets their water from Andersen PUD?

17 A Our rental on 2717, and then my sister has a home that
18 it also feeds.

19 Q Where's the home that your sister owns?

20 A Right beside 2717.

21 Q Okay. So you have two properties that are in the same
22 general location at 2717?

23 A Yeah. We have probably three.
24 (Clarifying interruption by the
25 reporter.)

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1 A Where it's affordable for the property owner and the
2 tenants, so currently what we have going on on the
3 park.

4 You know, ten years ago it was still viable. If
5 somebody came and bought the park, there was still
6 that -- if the parks started making it so it wasn't
7 able to maintain a park, drain fields failing or
8 whatever, you still have that light at the end of the
9 tunnel where you could go and develop it, just like
10 anything. You go out there and buy a house, if the
11 house is all worn down but it comes with acreage but
12 the house is -- you can live in it for a while and it
13 makes the rent, it's land banking.

14 Q If --

15 A Buy now so you can have good money down the road.

16 Q If your septic systems were not failing, would
17 operation of a mobile home park on your property be an
18 economically viable use?

19 A Not in the future.

20 Q Why not?

21 A Because also we're restricted how many units we have in
22 that park because of the drain fields. Drain field's
23 taken up a lot of the open space. We can't go and put
24 more homes in there.

25 Q Why then have -- have you never filed any application

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1 to convert it to another use before the City's zoning
2 ordinance was adopted?

3 [A] We were hanging onto it, and we were going to develop
4 it potentially or sell it, whatever the decision was
5 going to be made. And when we saw the ordinance, we
6 knew that -- that if we didn't move one way or the
7 other, that we wouldn't even have a retirement for
8 Phyllis.

9 Q How old is your mother?

10 A Seventy-seven.

11 Q And she's currently retired?

12 A Yes.

13 Q She living off the income from this park?

14 A Yes.

15 Q Okay. Let's take two minutes, and I think we're just
16 about done.

17 (Deposition concluded at 4:03 p.m.)

18 (Signature Reserved.)

19

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SCHEDULE E

(Form 1040)

Department of the Treasury
Internal Revenue Service (99)**Supplemental Income and Loss**(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc)

- Attach to Form 1040, 1040NR, or Form 1041.
- See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2006Attachment
Sequence No. 13

Name(s) shown on return

Phyllis A Anderson

Your social security number

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). Report farm rental income or loss from Form 4835 on page 2, line 40.

1 List the type and location of each rental real estate property:			2 For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:	
	A	B	C	Yes No
A Olympia, WA Mobile Home Park				A X
B Residential House, 2717 70th Avenue SW, Olympia, WA				B X
C				C
Income:			Properties	
	A	B	C	(Add columns A, B, and C.)
3 Rents received	3 128,343.	11,635.		3 139,978.
4 Royalties received	4			4
Expenses:			Totals	
5 Advertising	5 26.			
6 Auto and travel (see instructions)	6 890.			
7 Cleaning and maintenance	7 7,933.			
8 Commissions	8			
9 Insurance	9 5,149.	1,313.		
10 Legal and other professional fees	10 2,040.			
11 Management fees	11			
12 Mortgage interest paid to banks, etc (see instructions)	12			12
13 Other interest	13			
14 Repairs	14	3,686.		
15 Supplies	15			
16 Taxes	16 13,549.			
17 Utilities	17			
18 Other (list) ►				
Dues		195.		
Office supplies		298.		
P. O. Box		72.		
Security system monitoring		276.		
	18			
19 Add lines 5 through 18	19 30,428.	4,999.		19 35,427.
20 Depreciation expense or depletion (see instructions)	20 4,003.	1,359.		20 5,362.
21 Total expenses. Add lines 19 and 20	21 34,431.	6,358.		
22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	22 93,912.	5,277.		
23 Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	23			
24 Income. Add positive amounts shown on line 22. Do not include any losses			24	99,189.
25 Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here			25	
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2			26	99,189.

SCHEDULE E
(Form 1040)

 Department of the Treasury
 Internal Revenue Service

Supplemental Income and Loss

 (From rental real estate, royalties, partnerships,
 S corporations, estates, trusts, REMICs, etc)

- Attach to Form 1040, 1040NR, or Form 1041.
- See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2007Attachment
Sequence No. **13**

Name(s) shown on return

Phyllis A Anderson

Your social security number [REDACTED]

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

1	List the type and location of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:	Yes	No
A	Olympia, WA Mobile Home Park	A	• 14 days, or • 10% of the total days rented at fair rental value? (See instructions.)	X	
B	Residential House, 2717 70th Avenue SW, Olympia, WA	B		X	
C		C			

Income:	Properties			Totals	
	A	B	C	(Add columns A, B, and C.)	
3 Rents received	3 145,152.	10,800.		3	155,952.
4 Royalties received	4			4	
Expenses:					
5 Advertising	5				
6 Auto and travel (see instructions)	6 970.				
7 Cleaning and maintenance	7 12,541.	1,381.			
8 Commissions	8				
9 Insurance	9 6,163.	923.			
10 Legal and other professional fees	10 1,338.				
11 Management fees	11				
12 Mortgage interest paid to banks, etc (see instructions)	12			12	
13 Other interest	13				
14 Repairs	14				
15 Supplies	15				
16 Taxes	16 16,263.				
17 Utilities	17 1,049.				
18 Other (list) ►	18				
Dues	1,333.				
Office supplies	394.				
Licenses	713.				
19 Add lines 5 through 18	19 40,764.	2,304.		19	43,068.
20 Depreciation expense or depletion (see instructions)	20 5,120.	2,001.		20	7,121.
21 Total expenses. Add lines 19 and 20	21 45,884.	4,305.			
22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	22 99,268.	6,495.			
23 Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	23				
24 Income. Add positive amounts shown on line 22. Do not include any losses				24	105,763.
25 Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here				25	
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2				26	105,763.

SCHEDULE E
(Form 1040)
Department of the Treasury
Internal Revenue Service (99)**Supplemental Income and Loss**(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc.)

- Attach to Form 1040, 1040NR, or Form 1041.
- See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2008Attachment
Sequence No. **13**

Name(s) shown on return

Phyllis A Anderson

Your social security number [REDACTED]

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use

Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

1	List the type and address of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:	Yes	No
A	Mobile Home Park Olympia, WA	A	• 14 days, or		X
B	Residential 2717 70th Avenue SW Olympia, WA	B	• 10% of the total days rented at fair rental value?		X
C		C	(See instructions.)		

		Properties			Totals
		A	B	C	(Add columns A, B, and C.)
3	Rents received	3 153,438.	13,440.		3 166,878.
4	Royalties received	4			4
Expenses:					
5	Advertising	5			
6	Auto and travel (see instructions)	6 1,090.			
7	Cleaning and maintenance	7 17,664.			
8	Commissions	8			
9	Insurance	9 6,636.	703.		
10	Legal and other professional fees	10 490.			
11	Management fees	11			
12	Mortgage interest paid to banks, etc (see instructions)	12			12
13	Other interest	13			
14	Repairs	14 3,853.	2,376.		
15	Supplies	15			
16	Taxes	16 15,075.			
17	Utilities	17 1,647.			
18	Other (list) ►				
	Bank charges	120.			
	Licenses	520.			
	Permit	157.			
	Thurston County	45.			
	Office expense	466.			
	Rental research	134.			
	Dues	471.			
	Carport move	3,853.			
19	Add lines 5 through 18	19 52,221.	3,079.		19 55,300.
20	Depreciation expense or depletion (see instructions)	20 4,992.	2,867.		20 7,859.
21	Total expenses. Add lines 19 and 20 ...	21 57,213.	5,946.		
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	22 96,225.	7,494.		
23	Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	23			
24	Income. Add positive amounts shown on line 22. Do not include any losses			24	103,719.
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here			25	
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2			26	103,719.

**Northwest
Real Estate
Network, Inc.**

Jim Anderson

Jim,

I wanted to make some notes here to share with your family.

The problem my investors are having with your park is the amount of income it produces. Your 2007 statement shows \$142602 income and \$42468 expenses with a net income of \$100,134. Appraisers and lenders use cap rates to determine value. The cap rate for this kind of park is 7 or 8. At a 7 cap the park is worth \$1,430,485 (100,134 divided by .07 cap). At a 8 cap the park is worth \$1,251,675. (100,134 divided by .08) The 2006 net income is \$72,969 and the park would cap out even less.

When you project out your 2008 numbers based on the actuals you gave me you should have \$146,832 income and \$36100 expenses. However there are no management fees, accounting fees, utilities or deferred maintenance in the statement. With those out your net income will not be much higher than 2007.

The buyer will have to raise rents and cut expenses to get a return out of the park.

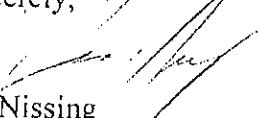
I talked to Dan Smith at the city about the water. He said if you take the park off your system you will lose your water right for a class A system. All you will have left is a water right for the residence on the property. You may want to check with him. He said he worked up the figures to hook on. He quoted \$79,400 with a \$18000 credit for the system. If he is right you would be better off keeping the water system a class A system and adding to it later.

The above valuations would be for properties that have water. A property without water isn't worth very much.

You would only have to pay tax on the amount you receive on an installment sale. That would defer taxes over the life of the contract.

Enclosed is an offer. Please call if you have any questions or we can have a meeting.

Sincerely,


Jim Nissing

Ex 9